



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 19774 OF 2017 (GM-CPC)

BETWEEN:

SRI R CHANDRU
SON OF LATE SRI RAMAPPA
AGED ABOUT 52 YEARS,
OFFICE AT UNIT NO.204, 2ND FLOOR
AHUJA CHAMGBERS NO.1
KUMARA KRUPA ROAD
BANGALORE-560 001.

...PETITIONER

(BY SRI. K VIJAYA KUMAR .,ADVOCATE)

AND:

1. SMT R LEELAVATHI
WIFE OF SRI B C RAJANNA
AGED ABOUT 48 YEARS,
2. SRI B C RAJANNA
SON OF LATE PATEL
CHOLURIAH, AGED ABOUT 59 YEARS
3. SRI B R CHETHAN KUAMR
SON OF SRI B C RAJANNA



AGED ABOUT 30 YEARS,

4. SRI R ANANDA KUMAR
SON OF SRI B C RAJANNA
AGED ABOUT 28 YARS

THE RESPONDENT 1 TO 4 ARE
RESIDING AT PIPELINE ROAD
ANJANA NAGAR
HEROHALLI MAGADI MAIN ROAD
DVISHWANEEDAM POST
BANGALORE-560091.

5. M/S DS-MAX PROPERTIES PRIVATE LIMITED
A COMPANY REGISTERED AND
INCORPORATED UNDER
THE COMAPNIES ACT 1956
AND HAVING OFFICE AT #1854
17TH MAIN, 30TH B CROSS
HBR LAYOUT 1ST STAGE, 5TH BLOCK,
BANGALORE-560043
REPRESENTED BY ITS DIRECTOR.

...RESPONDENTS

(BY SRI.N.SURENDAR, ADVOCATE FOR R1 TO R4;

SRI. LINGARAJ S. NADAGOUDA, ADVOCATE FOR 5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN O.S.931/2015 ON THE FILE OF PRL. CIVIL JUDGE, BANGLAROE RURAL DISTRICT, BANGALORE CULMINATING IN THE ORDER IMPUGNED AS AT ANNEX-F AND CALL FOR THE RECORDS IN M.A.10/2016 ON THE FILE OF II ADDL. SR. CIVIL JUDGE, BANGALORE RURAL DISTRICT, BANGALORE CULMINATING IN THE ORDER IMPUGNED



AS AT ANNEX-G; SET ASIDE THE ORDER DATED 4.1.2017 PASSED M.A.10/2016 ON THE FILE OF II ADDL. SR. CIVIL JUDGE BANGALORE RURAL DISTRICT BANGALORE CULMINATING IN THE ORDER IMPUGNED AS AT ANNEX-G AND THE ORDER DATED 25.1.2016 PASSED IN O.S.931/2015 ON INTERLOCUTORY APPLICATION NO.1 BY THE COURT OF PRL. CIVIL JUDGE, BANGALORE RURAL DISTRICT, BANGALORE AT ANNEX-F AND CONSEQUENTLY ALLOW INTERLOCUTORY APPLICATION NO.1 FILED BY THE PETITIONER IN THE SAID SUIT IN ENTIRETY AND GRANT AN ORDER OF TEMPORARY INJUNCTION AS PRAYED FOR IN THE SAID INTERLOCUTORY APPLICATION NO.1 AT ANNEX-C.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is by the plaintiff in O.S.No.931/2015 on the file of the Prl.Civil Judge, Bangalore Rural District, Bangalore (for short, the '*Civil Court*'). The civil Court by its order dated 25.01.2016 has rejected the petitioner's application [IA.1] for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [CPC] read with Section 151 of CPC against the respondents from putting up any construction in a portion of the property in Sy.No.65 of Herohalli



village, Yeshwanthapur Hobli, Bangalore North Taluk which is described as measuring 6856.41 sq.ft. The land measuring an extent measuring 1 acre 24 guntas in Sy.No.65 of Herohalli village, Yeshwanthapur Hobli, Bangalore North Taluk is described in Schedule-B of the plaint and the alleged area of encroachment measuring 6856.41 sq.ft. is described in Schedule-D of the plaint. The petitioner's appeal in M.A. 10/2016 on the file of the II Additional Senior Civil Judge, Bangalore Rural District, Bangalore [for short, the *appellate Court*] against the civil Court's order dated 25.01.2016 is also rejected by the next impugned order dated 04.01.2017.

2. The petitioner has filed the suit in O.S. No.931/2015 for mandatory injunction to remove the alleged enclosure to Schedule-D property and for permanent injunction as regards the Schedule-D



property as also against the alleged interference with the Schedule-B property. It is undisputed that the second respondent was the owner of the larger extent of land measuring 2 acres 24 guntas in Sy.No.65 of Herohalli village, Yeshwanthapura Hobli, Bangalore North Taluk, which is converted from agricultural to non-agricultural purposes in the year 2002-2003. The second respondent has transferred an extent of 1 acre 14 guntas in favour of the petitioner under the sale deed dated 24.10.2011, and he has simultaneously executed an agreement to sell dated 24.10.2011 agreeing to sell adjacent 10 guntas of land in the said survey number. This agreement is not registered on the same day but is registered a day's later on 26.10.2011.

3. The second respondent, with the transfer and the agreement to transfer as aforesaid, has retained for his use 1 acre, and out of this 1 acre, he has transferred 32.11 guntas in favour of his wife,

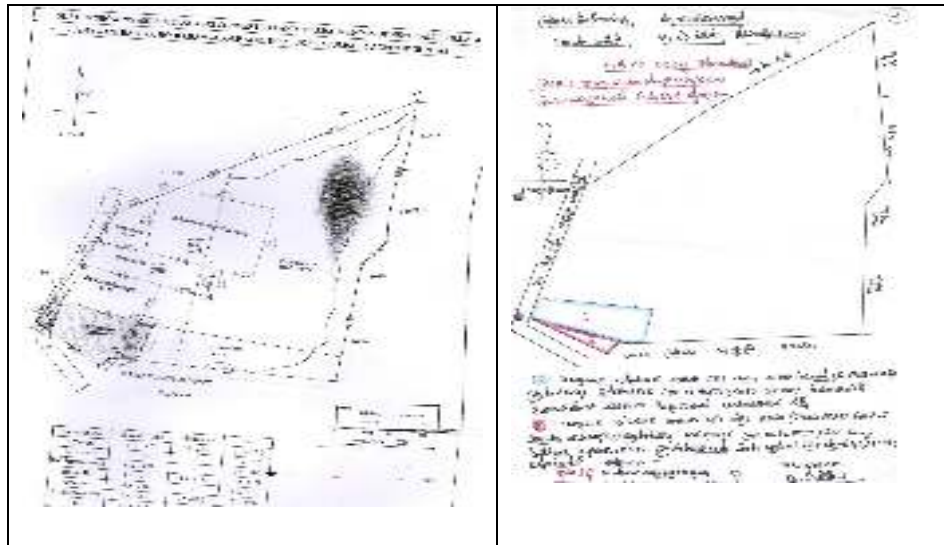


the first respondent. Later, the first and the second respondents, along with their children (the third and the fourth respondents) have executed a joint development agreement dated 12.03.2015 in favour of the fifth respondent who as of now has completed construction of a multi-unit residential complex. The second respondent with the gift deed dated 09.10.2014 had retained for his use 7.89 guntas, and the controversy is because of the rival claims to this property which is described in Schedule-D of the plaint.

4. The petitioner's cause as pleaded in the plaint is because there is an effort to encroach upon Schedule-B property and an attempt to encroach upon and take possession of Schedule-D property, a part of such property. The respondents deny any such effort and dispute the description of the portion detailed in Schedule-D. Thus, the controversy is about the location of this Schedule-D property, and



this is best explained with the juxtaposed reading of the following sketches relied upon by the petitioner and the respondents, respectively.



The First Sketch is relied upon by the petitioner and the Second Sketch is relied upon by the respondents. The location of the portion detailed in Schedule-D is indicated in bold in the First Sketch and in pink colour in the Second Sketch.

5. The petitioner contends that the Schedule-D property is to the west of the Schedule-B



property and construction is not complete in this portion, and the respondents contend that it is to the south of the property that is used for construction of the residential complex. The petitioner further contends that the road along the western side of the property retained by the second respondent is utilized for road widening and therefore the respondents are trying to move into the Schedule-B property [extent of 1 acre 24 guntas purchased by him], but the respondents, to justify that the portion retained by the second respondent is to the south [as seen in the second sketch] rely upon copies of the conversion sketch, the bifurcation of khata, and construction of the property.

6. While Sri Vijaya Kumar argues in support of the petition reiterating the petition averments and the contents of the sketch as extracted above, Sri N.Surender the learned counsel for the contesting respondents, is categorical that these respondents do



not deny the petitioner's right to possession of 1 acre 24 guntas as conveyed under the sale deed dated 24.10.2011 and agreed to be sold under the sale agreement dated 24.10.2011, but the respondents stoutly deny the assertions as regards the location of Schedule-D property and that there is any effort to encroach the said extent.

7. Both the trial and the appellate Courts have held that the petitioner has failed to make out a *prima facie* case for trial because he has not brought any material on record to justify his case that there is widening. Ultimately, the question of location of Schedule-D property will have to be finally decided in the suit. It would suffice for this Court to observe that it is settled that under Order XLIII Rule 1 of CPC, the appellate Court will not substitute its discretion with the discretion exercised by the trial Court only because an alternative view is permissible. If this is the rigour in law insofar as



the appellate jurisdiction, this rigour is also given due regard while exercising jurisdiction under Article 226 of the Constitution of India. Unless it is shown that some material circumstances have been overlooked or that the Courts' exercise of jurisdiction is otherwise perverse or capricious, this Court will not interfere.

8. The petitioner must ultimately succeed in the suit based on evidence that will be brought on record, but insofar as the present petition nothing is brought on record to show that the Courts have erred in exercising their jurisdiction that would justify interference by this Court. Therefore, the petition stands rejected. It is needless to observe that all questions are left open to be decided by the civil Court.

**SD/-
JUDGE**